

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:07-CR-0041
	:	
v.	:	(Judge Conner)
	:	
STEPHEN WILLIAM HRYCEK	:	

ORDER

AND NOW, this 17th day of October, 2008, upon consideration of defendant's motion (Doc. 24) to vacate the sentence imposed by this court on June 21, 2007, and defendant's election form (Doc. 27), electing to have the court rule upon the motion under 28 U.S.C. § 2255, and it appearing that petitioner predicates his claim for relief upon counsel's failure to file a notice of appeal, that the motion was filed outside of the prescribed limitations period, see 28 U.S.C. § 2255 ("A 1-year period of limitation shall apply to a motion under this section."), that prior to the instant filing petitioner believed that counsel had filed a notice of appeal, (see Doc. 24 ¶ 18), and that therefore the limitations period may be subject to equitable tolling,¹ see Brown v. Shannon, 322 F.3d 768, 774 (3d Cir. 2003) (observing that affirmative malfeasance or nonfeasance by an attorney may warrant application of equitable tolling), United States v. Garcia, No. Civ. A. 07-CV-4856, *1 (E.D. Pa. Nov. 30, 2007 (refusing to dismiss a habeas petition because the court could not determine from

¹The court will formally rule on defendant's equitable tolling argument after the parties have briefed the motion and provided sufficient evidence from which the court can determine the applicability of tolling principles.

the face of the petition whether the claims contained therein were time-barred), it is hereby ORDERED that:

1. The Clerk of Court is directed to serve a copy of the motion (Doc. 24) on the United States Attorney.
2. The United States Attorney shall file an answer to the motion (Doc. 24) on or before November 17, 2008. See R. GOVERNING § 2255 CASES 4(b), 5.
3. Defendant shall be permitted to file a reply on or before December 8, 2008. See R. GOVERNING § 2255 CASES 5(d).

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge